



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent of:

Thomas Matthews et al.

Serial Number: 10/084,913

Filed: March 1, 2002

For: NETWORK MANAGEMENT METHOD AND TOOL

Confirmation No.: 7140

Attorney Docket No.: 026304-00002

Group Art Unit: 2143

Examiner: Jude J. JEAN-GILLES

DECLARATION UNDER 37 CFR 1.131

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Thomas MATTHEWS, hereby declare that:

1. I am the sole inventor of at least the invention recited in claims 1, 11, 20 and 21 (all the independent claims) in the above application.

2. I am fully familiar with the subject matter of the above identified application, and of the Office Action mailed April 8, 2005, including United States Patent Number 6,766,165 (hereinafter referred to as the "Sharma patent"), which is relied on by the Examiner.

3. I am aware that Claims 1-21 of the above application have been rejected in the Office Action dated April 8, 2005, under 35 U.S.C. § 102(e) over the Sharma patent.

4. This declaration is made in support of the Applicant's submission that the Examiner's rejection under § 102(e) in view of the Sharma patent is not applicable. The subject matter over which Claims 1-21 have been rejected in light of the Sharma patent had been developed by the inventor of the present invention prior to the December 5, 2000, U.S. filing date, i.e., the effective date, of the application which matured into the Sharma patent.

5. Attached (Exhibit A) is a copy of a Webpage (www.findwealth.com/metrocall-announces-third-quarter-results-203454pr.html) containing a November 2, 2000, product announcement that includes reference to the product, called "IC2" or "Inciscent Command & Control" (see page 3 of 6), which is described and claimed in the present application. As indicated in the product announcement, IC2 was released in the third quarter of 2000, prior to the effective date of the Sharma patent.

6. In view of the facts and attached evidentiary exhibit discussed in items 4 and 5, the undersigned declarant respectfully avers that the claimed subject matter of the above application was invented, or at the very least, has a conception and reduction to practice date, no later than the third quarter of 2000, e.g., September 30, 2000, which precedes the December 5, 2000 effective date of the Sharma patent.

7. The undersigned declarant does hereby declare that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


Thomas MATTHEWS

Date: 7-7-05


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Metrocall Announces Third Quarter Results

2 Nov 2000

Advanced Messaging Products and Services Pace Net Additions

ALEXANDRIA, Va., Nov. 2/PRNewswire/ -- Metrocall, Inc. (NASDAQ:MCLL), a nationwide provider of advanced two-way interactive messaging services, announced results for the third quarter of 2000. Total revenues for the quarter were \$139.5 million and net revenues were \$132.5 million. EBITDA (earnings before interest, taxes, depreciation and amortization) was \$30.1 million for the quarter ended September 30, 2000. Net revenues and EBITDA increased over second quarter results. The company reported net subscriber additions of 30,131, of which approximately 30,000 were advanced messaging devices, bringing the total number of subscribers to 6,133,741, at September 30, 2000.



"We accomplished every internal goal for selling the wireless data and messaging products for the quarter. Our goal was to add 30,000 advanced messaging products and we hit that goal right on the mark," said William L. Collins III, Chairman, President & Chief Executive Officer. "The transformation from traditional messaging to advanced two-way messaging, gives Metrocall a tremendous opportunity to capitalize on the need for businesses and consumers to receive e-mail on the go, query the Internet and peer-to-peer messaging."

"Today Metrocall is in the unique position to offer the most sought after wireless services, from the small handheld Motorola Talkabout(TM) T900 to the Handspring(TM) Visor(TM)/Glenayre@civeLink(TM) PDA to the RIM 850 Wireless Handheld(TM) to the AT&T One Rate(SM) plans for PCS phones. Our sales professionals, which were recently ranked as the 10th largest U.S. communications sales force by the magazine 'Selling Power', are able to meet the growing needs of our customers," added Collins.

In mid-August, Metrocall began receiving shipments of the new Motorola T-900 two-way messaging devices. Since that time, the company has seen product delivery ramp up steadily. At the end of the quarter, Metrocall had approximately 45,000 advanced messaging products to meet the anticipated needs for the first two months of the fourth quarter. New products such as the Handspring Visor with the springboard slot attachment from Glenayre called the @civeLink will be available for the holiday selling season. In addition, Motorola has begun shipment of the next generation high-end two-way product, the TimePort(TM) P935 with the icon based Wisdom software. This product enables users to have the functionality of a PDA with two-way connectivity.

Key financial metrics for the third quarter * Cash and cash equivalents - \$27.2 million * Total bank debt - \$105.0 million * Total debt - \$740.0 million * Borrowing capacity - \$30 million * Interest expense - \$20.7 million * Subscribers per employee - 1,780 (3,445 employees)

During the quarter, Metrocall reduced its outstanding subordinated debt, exchanging 1,945,800 shares for \$18.25 million in principal of notes. Metrocall's total debt decreased in the quarter to \$740.0 million from \$758.4 million in the quarter ended June 30, 2000.

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Subsequent to quarter end Metrocall has exchanged an additional \$6 million of subordinated debt for approximately 1.6 million shares. The total subordinated debt exchanged through November 1st has been \$73.37 million for 8.6 million shares at an effective stock price of \$8.51 per share. These exchanges will save the company approximately \$7.8 million in annual interest expense. Metrocall will continue to look for opportunities to exchange debt for equity when it can do so at rates favorable to the company. All shares were issued pursuant to section 3(a)(9) of the Securities Act of 1933. As a result of these transactions, Metrocall will save cash interest expense of approximately \$7 million annually.

Also during the quarter, Inciscent, the company's joint venture sponsored by Metrocall, Aether Systems, PSINet, Hicks, Muse, Tate & Furst and Deutsche Bank Alex. Brown, announced IC2 (Inciscent Command & Control), a service that enables IT professionals to remotely configure network hardware and wirelessly deliver utility solutions to Cisco Network Products. Inciscent's IC2 is the ideal tool for network engineers and administrators seeking "anytime-access" to mission-critical routers, switches, hubs and servers. Inciscent also introduced a new Graphical User Interface (GUI) application designed to provide Metrocall customers with a rich interface to wireless content such as stocks, driving directions, news and weather from OracleMobile's wireless portal. This state-of-the-art GUI application, developed by Inciscent, is a user-friendly, icon-driven program that will provide access to all of OracleMobile's Ask@OracleMobile services for two-way messaging devices.

Highlights of the third quarter * Designated a Cisco Powered Network provider. Metrocall's Cisco-based network will enable the company to combine multiple, varied communications traffic over the same network circuits simultaneously. With this Cisco Powered Network, Metrocall will offer its customers enhanced high-performance, reliable and secure network services. This ATM Network is already carrying increased amounts of simultaneous voice, data and TNPP (wireless messaging) packets for Metrocall. * Signed a broad alliance with Handango that will result in enhanced products and services for customers of both companies. Handango and Metrocall will work together to offer handheld devices, applications and wireless messaging services to their customers using Handango's leadership in the handheld computing market and Metrocall's two-way interactive network capabilities. * Announced the company will sell its @ctivelink two-way wireless messaging module and AccessLink II(TM) two-way wireless messaging device through the leading online retailer Amazon.com. Consumers can purchase the @ctivelink module, sold as part of a bundle package with the Handspring Visor Deluxe 8MB handheld computer, and AccessLink II through the Amazon Electronics store. * Created a partnership with TrafficStation, the leading provider of traffic and traveler information services via the Internet and wireless devices, that will result in significant time savings and improved productivity for millions of

commuters and businesses across North America. The partnership couples the latest in two-way wireless messaging services with real-time, route-specific traffic and routing information. The result will be a unique, personalized service whereby subscribers will receive instantaneous updates as well as on-demand routing solutions that enable them to by-pass problem areas and give them peace-of-mind in critical travel circumstances. In addition, the companies will collaborate to develop and deliver position-based traffic and traveler information services that leverage networking capabilities and device-based positioning initiatives. * Partnered with Locate Networks to provide wireless location-based services and portable devices that help track valuable assets and loved ones. These highly accurate, person-portable location products will be available nationwide during the second quarter of 2001. Locate Networks will provide an end-to-end location solution utilizing the SnapTrack's patented Wireless Assisted GPS (Global Positioning System) technology and the ReFLEX data protocol. Metrocall will integrate the location service and location-enabled devices with its nationwide ReFLEX networking capabilities to offer a suite of products and services to its end-user customers. * Teamed with Aether Systems, Inc. and Congressional Quarterly to provide interactive news alerts and other essential information to the nation's top journalists and party officials this summer at the Republican National Convention in Philadelphia and the Democratic National Convention in Los Angeles on Motorola T900 wireless devices. Other events since the close of the third quarter: * Agreed to purchase one-half million (500,000) two-way messaging devices from Motorola. Metrocall's two-way unit order, which is expected to be fulfilled over two calendar quarters, represents the largest single order placed for two-way interactive messaging units since their market introduction. The purchase agreement includes both the Timeport P935 Personal Interactive Communicator (PIC) and the Talkabout T900 product lines. * Systems Applications Division installed a new state-of-the-art Integrated Resource Management (IRM) system to facilitate wireless communications for the Memorial Hermann Healthcare System. With 12 hospitals in Houston and the Golden Triangle, Memorial Hermann is the largest not-for-profit healthcare system in Texas and one of the largest in the nation. The on-premise IRM system provides for remote communication and interactive directory access to over 7,000 wireless devices.

Metrocall, Inc., headquartered in Alexandria, Virginia, is one of the largest wireless data and messaging companies in the United States providing both products and services to more than six million business and individual subscribers. Metrocall was founded in 1965, became a publicly traded company in 1993 and currently employs approximately 3,400 professionals coast to coast. The Company offers two-way interactive messaging, wireless e-mail and Internet connectivity, cellular and digital PCS phones, as well as one-way messaging services. Metrocall operates on many nationwide, regional and local networks, including a new Two-Way Interactive Network (TWIN), and can supply a wide variety of customizable Internet-based information content services. Also, Metrocall offers totally integrated resource management systems and communications solutions for business and campus environments. Metrocall's wireless networks operate in the top 1,000 markets all across the nation and the Company has offices and retail locations in more than forty states. Metrocall is the largest equity-owner of Inciscent, an independent business-to-business enterprise, that is a national

full-service "wired-to-wireless" Application Service Provider (ASP). For more information on Metrocall please visit our Web site and On-line store at <http://www.metrocall.com/>.

Safe Harbor Statement Under the Private Securities Litigation Reform Act of 1995

The statements set forth above that are not historical facts, such as those concerning Metrocall's advanced wireless data and messaging strategies, are forward-looking statements that are subject to risks and uncertainties. A number of risks and uncertainties could cause actual results to, events or developments to differ from expectations. Among the factors that could cause actual results to differ are 1) the speed and extent to which markets for advanced messaging data and messaging services develop and grow; 2) Metrocall's and its joint venture affiliate Inciscent's ability to develop and market products and services that respond to market conditions and customers' needs; 3) the impact of competition from other companies in the wireless data and Internet business; 4) the need to respond to rapid technological developments that could affect the commercial viability of Metrocall's and Inciscent's products and services; 5) the impact of delays in receiving sufficient supplies of two-way messaging products from manufacturers; 6) declines in revenues from one-way paging services; 7) the impact of Metrocall's high level of debt and need to comply with financial covenants applicable to such debt; 8) Metrocall's ability to achieve operating cost savings. You should refer to our Annual Report on Form 10-K for a complete discussion of these and other factors that could cause actual results to differ materially from those projected in these forward-looking statements.

Metrocall, Inc. and Subsidiaries Consolidated Statements of Operations Unaudited (Dollars in thousands, except pager, share and per share amounts) Three Months Ended Nine Months Ended September 30, September 30, 2000 1999 2000 1999 Revenues Service, rent and maintenance revenues \$125,314 \$136,601 \$380,705 \$416,004 Product sales 14,203 15,152 39,531 46,409 139,517 151,753 420,236 462,413 Net book value of products sold (7,043) (8,777) (24,210) (28,489) 132,474 142,976 396,026 433,924 Operating Expenses Service, rent and maintenance 30,449 37,552 93,599 119,167 Selling and marketing 25,570 23,235 77,035 72,899 General and administrative 46,369 42,663 129,237 126,831 Depreciation 33,973 24,961 87,860 71,615 Amortization 53,225 52,533 157,605 158,035 189,586 180,944 545,336 548,547 Loss from operations (57,112) (37,968) (149,310) (114,623) Interest expense (20,672) (21,672) (63,416) (63,493) Interest and other income (expense) 499 81 678 309 Loss before income tax benefit and extraordinary item (77,285) (59,559) (212,048) (177,807) Income tax benefit 15,557 15,731 46,577 47,255 Loss before extraordinary item (61,728) (43,828) (165,471) (130,552) Extraordinary item 3,862 -- 19,649 -- Net loss (57,866) (43,828) (145,822) (130,552)

Exhibit A

Preferred dividends (2,327) (4,151) (7,413) (12,202) Inducement on exchange of preferred stock -- -- (6,308) -- Gain on repurchase of preferred stock -- -- -- 2,208 Loss attributable to common stockholders \$(60,193) \$(47,979) \$(159,543) \$(140,546) Basic and diluted loss per share attributable to common stockholders Loss per share before extraordinary item attributable to common stockholders \$(0.73) \$(1.15) \$(2.45) \$(3.37) Extraordinary item, net of income tax benefit 0.04 -- 0.27 -- Basic and diluted loss per share attributable to common stockholders \$(0.69) \$(1.15) \$(2.18) \$(3.37) Weighted-average number of common shares outstanding 87,299,227 41,861,908 73,056,927 41,734,431 Other Data: Net Revenues \$132,474 \$142,976 \$396,026 \$433,924 EBITDA \$30,087 \$39,526 \$96,155 \$115,027 EBITDA margin on net revenues 22.7% 27.7% 24.3% 26.5% Pagers in service (end of period) 6,133,741 5,877,375 6,133,741 5,877,375 ARPU \$6.82 \$7.78 \$7.00 \$7.99

Source: Metrocall, Inc.

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